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MM Docket No. 01-89 VED
RM-10094

3 These priorities are: 1) To provide at least one television service to all parts of the United States. 2) To provide each community with at least one television broadcast station. 3) To provide a choice of at least two television services to all parts of the United States. 4) To provide each community with at least two television broadcast stations. 5) Any channels which remain unassigned under the foregoing priorities will be assigned to the various communities depending on the size of the population of each community, the geographical location of such community, and the number of television services available to such community from television stations located in other communities. *See Sixth Report and Order* in Docket Nos. 8736, 8975, 9175 and 8976, 41 FCC 148, 167 (1952)

3. Petitioner states that a grant of its proposal will serve the public interest because the station will gain the advantage of being licensed to the larger community of Plano, with a U.S. Census population of 128,713 persons, which will give it an economic advantage with potential advertisers in the competing Dallas/Forth Worth Television market. In addition, since it has relocated its transmitter to a site within the Dallas city limits, it now proposes no change of transmitter site and will continue to serve its former community, so there will be no loss of service. Citing the Commission's decisions in the *Change of Community MO&O*⁴ and *Ardmore, Oklahoma and Sherman, Texas*,⁵ it argues that its proposal should be considered because its proposal is mutually exclusive with its current operation, it proposes no change of transmitter site and therefore no loss of reception service, will provide Plano with its first local transmission service, and will continue to serve the community of Decatur with a city grade signal. In addition, it states that its economic survival dictates that it be licensed to a larger community.

4. Although we note that this proposal would remove Decatur's sole local television service and we are reluctant to remove a community's sole local service,⁶ we will seek comment on this proposal in order to determine whether this proposal could promote the public interest. We believe that it warrants our consideration because it would provide the community of Decatur with its first local television service and involves no actual loss of service. Channel 29 can be reallotted from Plano to Decatur at petitioner's licensed site.⁷ Therefore, we seek comment on whether the reallotment would result in a preferential arrangement of allotments.

5. We also note that this proposal includes a move in to larger Urbanized Areas. Plano is in the Dallas-Fort Worth Urbanized Area. Further, our analysis shows that the proposal will serve 100% of the Lewisville Urbanized Area, and 81.9% of the Dallas-Fort Worth Urbanized Area. The DTV city-grade contour will cover 100% of the Lewisville, Denton and Dallas-Fort Worth Urbanized Areas. Accordingly, petitioner is also to include in its comments a public interest justification for the reallotment of Channel 29 from the smaller community of Decatur to the much larger community of Plano and these Urbanized Areas. Petitioner is to use the analysis set forth in our decisions in *Huntington* and *Tuck*.⁸

6. We also note that petitioner has not supplemented its petition with a request to reallot the companion digital channel allotted to Decatur, Channel 30. Petitioner is to state in its comments whether it seeks this reallotment, and provide justification for this reallotment.

7. Accordingly, we seek comments on the proposed amendment of the FM Table of

⁴ See *Memorandum Opinion and Order* in MM Docket No. 88-526, 5 FCC Rcd 7094, 7096 (1990)(stating that it would consider waivers of the prohibition on the removal of the sole local transmission service in conjunction with change of community requests).

⁵ See *Report and Order* in MM Docket No. 91-342, 7 FCC Rcd 4846 (1992).

⁶ See *Report and Order* in MM Docket 89-87 (Bessemer and Tuscaloosa, Alabama), 5 FCC Rcd 669 (1990), app. For rev. 11 FCC Rcd 11585 (1996).

⁷ The coordinates for Channel 29 at Plano, Texas are 32-52-16 NL and 96-55-22 WL.

⁸ See *Huntington Broadcasting Co. v. FCC* 192 F.2d 33 (D.C.Cir. 1951); *Faye and Richard Tuck, Inc.*, 3 Fcc Rcd 5374 (1988).

Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Decatur, Texas	29	--
Plano, Texas	--	29

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

9. Interested parties may file comments on or before June 4, 2001, and reply comments on or before June 19, 2001, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Robert L. Olender
5335 Wisconsin Avenue, N.W.
Suite 300
Washington, DC 20015-2003
(counsel to petitioner)

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding, contact Victoria M. McCauley, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on

the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.